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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAD PALLETT,

Defendant and Appellant.

A154345

(Napa County
Super. Ct. Nos. CR180852,
CR183622)

Chad Pallett failed to report for probation on felony false imprisonment and assault convictions. Probation was revoked, and Pallett was sentenced to two years in prison. Court-appointed appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Our independent review of the record reveals no arguable issues, and we affirm.

BACKGROUND

Case No. CR180852

In September 2016, Pallett pled no contest to felony false imprisonment (Pen. Code, § 236)¹ associated with stabbing a woman in the leg. Pursuant to his plea agreement, felony charges of assault with a deadly weapon and assault by means likely to cause great bodily injury (§ 245, subds. (a)(1), (4)) were dismissed. Pallett signed a written waiver of rights, and the plea's factual basis was stipulated. Sentence was suspended, and Pallett was placed on three years' formal probation with conditions

¹ Undesignated statutory references are to the Penal Code.

including monthly reporting, compliance with all laws and probation department orders, and abstention from alcohol. In April 2017, Pallett admitted a probation violation for failure to report. The court took an oral waiver of rights, then revoked and reinstated probation on modified terms, including a 129-day jail term with 129 days' credit for time served.

Case No. CR183622

In October 2017, Pallett pled no contest to an amended count of assault (§ 245, subd. (a)(4)) associated with an arrest for shoplifting and assaulting a store security guard. Pursuant to his plea agreement, felony charges of second degree robbery (§ 211) and dissuading a witness by force or threat (§ 136.1, subd. (c)(1)) were dismissed. A pending misdemeanor case for trespassing also was dismissed. The plea's factual basis was stipulated and the anticipated sentence was probation with no jail time. Pallett signed a written waiver of rights, including a waiver pursuant to *People v. Cruz* (1988) 44 Cal.3d 1247, 1254, fn. 5, which meant his plea would become open if he failed to report or otherwise violated the terms of release. Pallett was released on his own recognizance pending sentencing, and the court specifically advised him: "You're gonna get released today[. Y]ou have to report to the Probation department. You have to keep any appointments with Probation as they direct." Based on the assault conviction, Pallett also admitted a probation violation in case No. CR180852, with probation in that matter revoked and reinstated on the same terms.

October and November 2017 Probation Violations

Pallett failed to appear for an October 25, 2017 probation appointment, but he appeared the following day. The probation department argued Pallett's plea was open due to the violation and recommended a prison sentence. The court found the plea open but rejected a prison sentence. Sentencing was continued to November 30 for a new presentence report. On November 29, Pallett was arrested for consuming alcohol and trespassing in violation of probation.

At Pallett's November 30, 2017 sentencing hearing in case No. CR183622, the prosecutor sought a prison sentence in light of Pallett's new violation. Pallett said he did

not know he was on probation or subject to a no-alcohol condition after his release in October. Sentence was suspended and Pallett was placed on three years' formal probation on condition he serve 300 days in jail with 224 days in presentence custody credits. He was ordered in writing to report to the probation department immediately upon release from custody.

While still in custody on case No. CR183622, Pallett admitted violating his probation in case No. CR180852 based on the November 29 trespass and alcohol use. The court took an oral waiver of rights, and again revoked and reinstated Pallett's probation on the same terms. Those terms included a prior order to report to the probation department immediately upon release from custody.

2018 Probation Revocation

Pallett was released from custody on December 30, 2017. He did not report to probation. Warrants were issued in both cases, and Pallett was taken into custody in March 2018. On March 8, he denied the violation and requested substitution of counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The motion was denied. At a March 28 hearing, the court took judicial notice of prior orders in both cases. Pallett's probation officer testified Pallett did not report at any time after his release in December 2017, and the officer did not know why Pallett failed to report. The defense did not present any evidence but argued evidence of a willful violation was insufficient. The court found willfulness, noting an absence of evidence that Pallett had been unable to report.

At the May 3, 2018 sentencing on the probation violations, Pallett asked to present evidence in mitigation of his sentence: surveillance video footage of the incident underlying his assault conviction. The court accepted counsel's representations the video showed Pallett was not the aggressor but ruled it irrelevant to the current sentencing issue—whether Pallett was amenable to remain on probation. Probation was revoked in both cases. Pallett was sentenced to the low term of two years in case No. CR183622, with 406 custody credits, and a concurrent low term of 16 months in case No. CR180852, with 492 custody credits. Pallett appeals.

DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note appointed counsel filed a *Wende* brief raising no issues; counsel attempted to advise Pallett of his right to file a supplemental brief but Pallett's whereabouts are unknown; and Pallett did not file a supplemental brief. We have independently reviewed the entire record, including the reporter's transcript of the March 8, 2018 *Marsden* hearing, and find no error.

The March 28, 2018 probation violation hearing transcript discloses substantial evidence of a willful probation violation. (See *People v. Hall* (2017) 2 Cal.5th 494, 498–499.) Although the probation officer testified he did not know why Pallett failed to report as ordered and had not spoken to Pallett since he was incarcerated, the court inferred willfulness from an absence of affirmative evidence of Pallett's inability to report. While the prosecution may not rely on negative inferences from a defendant's failure to testify to meet its burden of proof in a criminal trial (see *Griffin v. California* (1965) 380 U.S. 609, 613–614), the rule does not apply to a probation violation hearing. (See *Minnesota v. Murphy* (1984) 465 U.S. 420, 435, fn. 7 [state may insist on answers to incriminating questions in administering probation if not used against the probationer in a separate criminal proceeding]; *People v. Garcia* (2017) 2 Cal.5th 792, 803.)

While the trial court did not review the surveillance video related to case No. CR183622 at sentencing, Pallett's guilt in that case had already been established and defense counsel's representation of the video's content was accepted. The court had ample grounds to revoke probation in both matters—specifically, Pallett's repeated poor performance on probation (Cal. Rules of Court, rule 4.414(b)(2), (3), (4)). Additionally, the sentence imposed was mitigated: concurrent terms of the lowest number of years prescribed by statute (§§ 18, 236, 245, subd. (a)(4), 1170, subd. (a)(3); Cal. Rules of Court, rules 4.420–4.423). Pallett received presentence custody and conduct credits as required by sections 2900.5, subdivision (a) and 4019, subdivision (a)(4).

We are satisfied Pallett's appointed attorney has fully complied with the responsibilities of appellate counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283–284.)

DISPOSITION

The judgment is affirmed.

BURNS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

A154345